

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 00-284 JP/LCS

CHARLES BEST, JR.,

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Court's Order to Show Cause (*Doc. 5*), filed June 16, 2000. Federal Rule of Civil Procedure 4(m) provides:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time

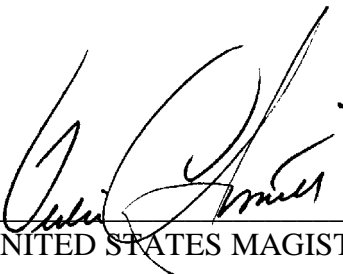
Because the Complaint was filed by the Plaintiff on February 25, 2000 more than 120 days have elapsed since the filing of the Complaint. The record reflects that the Defendant has not been served. Furthermore, Plaintiff was given notice in the Order to Show Cause that this action would be dismissed without prejudice if Defendant was not served, or good cause shown for the failure to serve Defendant, within thirty days of the Order to Show Cause. Plaintiff has not

responded to the Order to Show Cause within that thirty day period.

The Court finds that Plaintiff's failure to serve Defendant, or to respond to the Court's Order to Show Cause, indicates that Plaintiff does not seek to pursue this action. Accordingly, the Court proposes finding that this action should be dismissed without prejudice pursuant to Local Rule D.N.M. LR-Civ. 41.1 and Fed. R. Civ. P. 41(b).

Recommended Disposition

I recommend that this action be **dismissed without prejudice** for Plaintiff's failure to serve Defendant within 120 days after the filing of the Complaint. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.


UNITED STATES MAGISTRATE JUDGE